



FACE SHEET  
TRIBAL AGREEMENT  
**COPY**

Agreement Number: F10-43103-902

Washington State Department of Commerce  
Housing Division  
Housing Improvements and Preservation  
Weatherization Program

**MAILED**  
6-17-2010

<b>1. Contractor</b> Cowlitz Indian Tribal Housing PO Box 711 Chehalis WA 98532		<b>2. Contractor Doing Business As (optional)</b> _____	
<b>3. Contractor Representative</b> Jerry Hause Program Manager (360) 864-8720 Fax (360) 865-8722 jhause@toledotel.com		<b>4. COMMERCE Representative</b> Eunice Herren Tribal Liaison for Weatherization (360) 725-2949 (360) 586-5880 eunice.herren@commerce.wa.gov <span style="float: right;">                     PO Box 42525                      906 Columbia St SE                      Olympia WA 98504                 </span>	
<b>5. Agreement Amount</b> \$125,000	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Start Date</b> April 1, 2010	<b>8. End Date</b> March 31, 2011
<b>9. Federal Funds (as applicable)</b> \$125,000	<b>Federal Agency</b> Dept of Energy		<b>CFDA Number</b> 81.042
<b>10. Tax ID #</b> 02-0573544	<b>11. SWV #</b> _____	<b>12. UBI #</b> 000000000	<b>13. DUNS #</b> 808-322-049
<b>14. Agreement Purpose</b> Provide weatherization services to low-income Cowlitz Tribal members in their customary service delivery area of Clark, Cowlitz, Lewis, and Skamania counties.			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget, and Attachment "C"-10/7/09 OMB Memo on ACORN..			
<b>FOR CONTRACTOR</b>  _____ Larry Coyle, Executive Director 5-17-2010 _____ Date		<b>FOR COMMERCE</b>  _____ Dan McConnon, Assistant Director 6/9/10 _____ Date  <b>APPROVED AS TO FORM ONLY</b>  _____ Signature on file Sandra Adix, Assistant Attorney General  _____ April 5, 2010 _____ Date	



# Department of Commerce

Innovation is in our nature.

## **Tribal Agreement with**

Cowlitz Indian Tribal Housing

through

Commerce Housing Improvements and Preservation  
Weatherization Program

**For**

Low-Income Weatherization Services

**Start date:**      Date of Execution

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**SPECIAL TERMS AND CONDITIONS  
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**1. ACKNOWLEDGEMENT OF FEDERAL FUNDING**

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Agreement, shall contain the following statements:

"This project was supported by Grant No. DE-FG51-06R02168 awarded by Department of Energy. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the Department of Energy. Grant funds are administered by the Housing Improvements & Preservation Weatherization Program of COMMERCE.

**2. AGREEMENT MANAGEMENT**

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Agreement.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Agreement.

**3. COMPENSATION**

COMMERCE shall pay an amount not to exceed (\$125,000) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

The federal Office of Management and Budget has issued a 10/7/09 Memorandum restricting any "obligation or award" to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, or allied organizations. A copy of this Memorandum is marked as Attachment C and is both incorporated by reference and attached to this agreement. This Memorandum requires that no federal funding be awarded through this contract or through any subgrants, subcontracts, or other subrecipient arrangements.

**4. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Contractor upon acceptance of properly completed invoices, which shall be submitted to the Representative for COMMERCE [*not more often than monthly.*]

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Agreement reference number F10-43103-902. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Agreement or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

**Duplication of Billed Costs**

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The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

**5. CULTURALLY RELEVANT SERVICES**

In performing work pursuant to any Agreement, the Contractor may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and particularly suited to and/or particularly located for access by members of the Contractor's Nation or other tribes, in accordance with tribal laws and policies.

**6. HIRING AND EMPLOYMENT PRACTICES**

The Contractor may give preference in its hiring and employment practices to members of the Contractor, or other tribes, who have met all requirements for that position, including, state requirements, and as may be provided by tribal laws and policies.

**7. INSURANCE**

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect COMMERCE should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Agreement.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Contractor shall submit to COMMERCE within fifteen (15) calendar days of the Agreement start date, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Agreement, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Agreement activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

**Automobile Liability.** In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Professional Liability, Errors and Omissions Insurance.** The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

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**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Agreement shall be \$100,000 or the highest of planned reimbursement for the Agreement period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subcontractors that receive \$10,000 or more per year in funding through this Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.
- C. The Contractor shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

**8. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

**9. SOVEREIGN IMMUNITY**

Nothing whatsoever in this Agreement constitutes or shall be construed as a waiver of the Contractor's sovereign immunity.

**GENERAL TERMS AND CONDITIONS  
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**1. DEFINITIONS**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Agreement, and shall include all officers, employees and/or agents of the Contractor.
- C. "COMMERCE" shall mean the Department of Commerce.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean a separate contract between the Contractor and an individual or entity (Subcontractor) to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to any Agreement. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
- G. "Tribal Law" means the resolutions, law, codes, and/or ordinances enacted by the Contractor executing this Agreement, and any of the Contractor's tribal court decisions interpreting the same. All references in this Agreement to tribal law shall include any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.

**2. ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

**3. AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**4. ASSIGNMENT**

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

**5. AUDIT**

**A. General Requirements**

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

COMMERCE reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

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Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

**B. Federal Funds Requirements - OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations**

Contractors expending \$500,000 or more in a fiscal year in federal funds from all sources, direct and indirect, are required to have an audit conducted in accordance with Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations." Revised OMB A-133 requires the Contractor to provide the auditor with a schedule of Federal Expenditure for the fiscal year(s) being audited. The Schedule of State Financial Assistance must be included. Both schedules include:

- Grantor agency name
- Federal agency
- Federal program name
- Other identifying agreement numbers
- Catalog of Federal Domestic Assistance (CFDA) number
- Grantor agreement number
- Total award amount including amendments (total grant award)
- Beginning balance
- Current year revenues
- Current year expenditures
- Ending balance
- Program total

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by COMMERCE.

**C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

- Department of Commerce
- ATTN: Audit Review and Resolution Office
- 906 Columbia Street SW, Fifth Floor
- PO Box 48300
- Olympia WA 98504-8300

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

**6. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS**

- A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:**



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1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  2. Have not within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this section; and
  4. Have not within a three-year period preceding the signing of this Agreement had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Contractor is unable to certify to any of the statements in this Agreement, the Contractor shall attach an explanation to this Agreement.
- C. The Contractor agrees by signing this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Contractor further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

**LOWER TIER COVERED TRANSACTIONS**

- a) The lower tier contractor certifies, by signing this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - b) Where the lower tier contractor is unable to certify to any of the statements in this Agreement, such contractor shall attach an explanation to this Agreement.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

**7. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

- A. "Confidential Information" as used in this section includes:
1. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
  2. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
  3. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal Information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

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- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Agreement and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Agreement whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

**8. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Agreement. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

**9. DISPUTES**

Except as otherwise provided in this Agreement, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;

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- state the Contractor's name, address, and Agreement number; and
- be mailed to the Director and the other party's (respondent's) Agreement Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Agreement shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

**10. ETHICS/CONFLICTS OF INTEREST**

In performing under this Agreement, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

**11. GOVERNING LAW AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**12. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, all other agencies of the State and all officers, agents and employees of the State, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Agreement. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated or reduced by any actual or alleged concurrent negligence of the State or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, COMMERCE, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officers, agents or employees.

**13. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

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**14. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

**United States Laws, Regulations and Circulars (Federal)**

**A. Audits**

Office of Management and Budget (OMB) Revised Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

**B. Labor and Safety Standards**

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

**C. Laws against Discrimination**

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90  
Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Handicapped Employees of Government Contractors, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Handicapped Recipients of Federal Financial Assistance, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

**D. Office of Management and Budget Circulars**

Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-87, 2 CFR, Part 225.

Cost Principles for Nonprofit Organizations, OMB Circular A-122 (if the Contractor is a nonprofit organization).

Grants and Cooperative Agreements with State and Local Governments, OMB Circular A-102 (if the Contractor is a local government or federally recognized Indian tribal government).

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Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, OMB Circular A-110.

**E. Other**

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243 Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Internal Revenue Service Rules, August 31, 1990.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352 (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Contractors who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

**F. Privacy**

Privacy Act of 1974, 5 U.S.C. 552a.

**Washington State Laws and Regulations**

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

**15. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Agreement, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further Agreements with COMMERCE. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

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**16. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

**17. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS**

A Contractor which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with OMB Circulars A-102, Uniform Administrative Requirements for Grants in Aid for State and Local Governments, for all purchases funded by this Agreement.

A Contractor which is a nonprofit organization shall establish procurement policies in accordance with OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Nonprofit Agencies, for all purchases funded by this Agreement.

The Contractor's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
  - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - c. Positive efforts shall be made to use small and minority-owned businesses.
  - d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - e. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - f. Some form of price or cost analysis should be performed in connection with every procurement action.
  - g. Procurement records and files for purchases shall include all of the following:
    - 1) Contractor selection or rejection.
    - 2) The basis for the cost or price.
    - 3) Justification for lack of competitive bids if offers are not obtained.
  - h. A system for Agreement administration to ensure Contractor conformance with terms, conditions and specifications of this Agreement, and to ensure adequate and timely follow-up of all purchases.
4. Contractor and Subcontractor must receive prior approval from COMMERCE for using funds from this Agreement to enter into a sole source Agreement or an Agreement where only one bid or proposal is received when value of this Agreement is expected to exceed \$5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

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**18. RECAPTURE**

In the event that the Contractor fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of this Agreement, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

**19. RECORDS MAINTENANCE**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

**20. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, COMMERCE may terminate the Agreement under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Agreement may be amended to reflect the new funding limitations and conditions.

**21. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.

**22. SUBCONTRACTING**

Neither the contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of COMMERCE.

In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to COMMERCE for any breach in the performance of the contractor's duties.

This clause does not include contracts of employment between the contractor and personnel assigned to work under this Agreement.

**23. SURVIVAL**

The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

**24. TERMINATION FOR CAUSE / SUSPENSION**

In event COMMERCE determines that the Contractor failed to comply with any term or condition of this Agreement, COMMERCE may terminate the Agreement in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

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In the alternative, COMMERCE upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, COMMERCE may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Agreement. Failure by the Contractor to take timely corrective action shall allow COMMERCE to terminate the Agreement upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when COMMERCE determines that the Contractor did not fail to comply with the terms of the Agreement or when COMMERCE determines the failure was not caused by the Contractor's actions or negligence.

If the Agreement is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement Agreement, as well as all costs associated with entering into the replacement Agreement (i.e., competitive bidding, mailing, advertising, and staff time).

**25. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Agreement, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, COMMERCE shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

**26. TERMINATION PROCEDURES**

After receipt of a notice of termination, except as otherwise directed by COMMERCE, the Contractor shall:

- A. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Agreement;
- C. Assign to COMMERCE all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of COMMERCE, and
- D. Preserve and transfer any materials, Agreement deliverables and/or COMMERCE property in the Contractor's possession as directed by COMMERCE.

Upon termination of the Agreement, COMMERCE shall pay the Contractor for any service provided by the Contractor under the Agreement prior to the date of termination. COMMERCE may withhold any amount due as COMMERCE reasonably determines is necessary to protect COMMERCE against potential loss or liability resulting from the termination. COMMERCE shall pay any withheld amount to the Contractor if COMMERCE later determines that loss or liability will not occur.

The rights and remedies of COMMERCE under this section are in addition to any other rights and remedies provided under this Agreement or otherwise provided under law.

**27. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by Authorized Representative of COMMERCE.



## SCOPE OF WORK

### Cowlitz Indian Tribal Housing (CITH)

Provide Weatherization Services for qualified Low-Income Cowlitz Tribal members in the Cowlitz Indian Tribe customary service delivery area of Clark, Cowlitz, Lewis, and Skamania counties, according to the Weatherization Manual for Managing the Low-Income Weatherization Program (online at <http://www.commerce.wa.gov/site/513/default.aspx>) and industry best practices.

CITH shall provide weatherization services to a minimum of 15 eligible homes through this Agreement.

#### Program Description

The CITH shall:

- Develop a weatherization service delivery plan
- Develop the CITH Project Plan in coordination with the COMMERCE Representative
- Screen households for eligibility
- Provide weatherization services to eligible households
- Maintain records of all applicants.
- Maintain records of all completed Weatherization services
- Submit quarterly reports to the COMMERCE Representative of number of applicants, projects underway, and projects completed

CITH shall make weatherization program information available to all tribal households in the CITH service area through the CITH's established distribution system, according to the Weatherization Program Project Plan.

CITH will work in coordination with COMMERCE to provide the Consumer Conservation Education Training for energy conservation and weatherization. CITH shall provide this client education to clients within CITH service delivery area, according to the Weatherization Program Project Plan.

**CITH shall conduct all weatherization services in compliance with COMMERCE requirements as stated in:**

- **Washington State Low-Income Weatherization Assistance Plan for the current year, as applicable.**
- **Washington State Weatherization Manual for Managing the Low-Income Weatherization Assistance Program, as amended.**

Evaluation/intake: CITH will provide evaluation and intake for qualified participants in accordance with their current income eligibility guidelines for the HHS Low-Income Home Energy Assistance Program (LIHEAP).

Audits and Inspections: Only persons certified as a Building Analyst by the Building Performance Institute (BPI) shall conduct all Audits and Inspections.

Installation of weatherization measures: CITH weatherization crew or subcontractors shall provide installation of weatherization measures under the terms and conditions of this Agreement.

Contract Review: The COMMERCE Representative shall coordinate with CITH Contractor Representative no less often than quarterly to review the progress of the Agreement, as included in the Project Plan.

Monitoring: COMMERCE shall perform monitoring according to the CITH Project Plan. The COMMERCE Representative will coordinate with the CITH Contractor Representative and the COMMERCE Compliance and Inspections Monitor in scheduling monitoring visits, which will include site inspections and desk monitoring.

Training: CITH shall use the Training and Technical Assistance budget for various weatherization training opportunities over the course of the Agreement. The goal is to increase the CITH weatherization program and technical capacity to provide weatherization services to Native Americans in their service area. The CITH Weatherization Program Manager, Auditors, and Inspectors will complete COMMERCE Training in Lead Safe Work Practices and Combustion Safety during the course of the Agreement. These trainings are provided through the Building Performance Center at no cost to Tribal Weatherization employees. Training and Technical Assistance funds from this Agreement may be used for travel, per diem, and lodging for this training. Auditor/Inspector BPI certification is required and may be paid from this training fund.

#### Measurable Objectives

Measurable objectives for the Tribal Weatherization Program will include:

- Number of eligible homes
- Number of eligible homes weatherized
- Number receiving client education
- Capacity building – how CITH is better prepared to provide weatherization services to American Indians and Alaskan Natives

CITH performs ongoing evaluation of the weatherization program to assess costs and benefits. Upon request, CITH shall assist COMMERCE in the evaluation of the weatherization program, providing data and household access, if needed.

#### Performance Requirements

CITH shall use funds provided under this Agreement in a manner consistent with the following:

- Qualified participants are those who meet low-income eligibility requirements for the Tribal LIHEAP program.
- CITH will provide weatherization services according to the Weatherization Manual for Managing the Low-Income Weatherization Program, as amended, during the term of this Agreement.

- CITH will provide participant households with energy conservation educational materials and advice for installation of low cost/no cost energy efficiency measures.
- CITH will provide a quarterly data report.
- CITH will submit monthly Requests for Reimbursement.
- CITH will provide a final report that describes accomplishments based on measurable objectives, and the final request for reimbursement within 45 days after ending date of the Agreement.

BUDGET

Administration	\$12,500
Weatherization Services	\$100,000
Training and Technical Assistance	\$6,250
Client Education	\$6,250
<b>TOTAL</b>	<b>\$125,000</b>